



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

FEB 10 2000

Ms. Joan N. McNamara  
Deputy City Attorney  
City of San Diego  
1200 Third Avenue, Suite 700  
San Diego, California 92101-4106

Ref. No: 99-0208

Dear Ms. McNamara:

This is in response to your letter requesting clarification on the provisions for transportation of Materials of Trade (MOTs) under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask whether a company, using its own vehicle, may deliver a product under the provisions of § 173.6. You state that a misunderstanding exists due to the fact that we have authorized door-to-door salespeople to take advantage of the MOTs exception.

Your understanding is correct that door-to-door salespeople may utilize the MOTs exception. However, a company that routinely transports and delivers a product to a customer may not take advantage of this exception. The MOTs exception is intended to provide relief to persons who transport hazardous materials in "direct support of their business" not to companies that deliver product.

I hope this information is helpful.

Sincerely,

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards



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July 20, 1999

Mr. Edward T. Mazzullo, Director of OHMS  
Office of Hazardous Materials Standards  
United States DOT/RSPA (DHM-10)  
400 - 7th Street SW  
Washington, DC 20590-0001

Dear Mr. Mazzullo:

Materials of Trade Exception

Recently a case was submitted to our office with the following facts. A company, using their own vehicle, was delivering to a customer sixty buckets of a product labeled corrosive. Although each bucket weighed twenty-two pounds, each bucket was a combination package which contained only 1.3 pounds of corrosive material (UN 2735). Therefore, they were transporting approximately seventy-eight pounds of corrosives. The product had not been reclassified as ORM-D. The shipping papers did not identify the product as hazardous material.

The company argued they were entitled to the materials of trade exception because their "principal business" was selling products and solutions, not transportation. Among other things, the company sells and distributes bearings, mechanical and electrical drive system products, industrial rubber products and maintenance and specialty repair items (manufactured by others). They are described as wholesale trade - industrial suppliers.

The company relied on an April 4, 1997, DOT opinion letter to Degussa Corporation which expressly states that salespeople are entitled to the materials of trade exception. They further relied on the preamble to the materials of trade regulation which expressly states that door-to-door salesmen of consumer goods are entitled to the exception.

Here, to our knowledge, the company does not sell door-to-door. However, customers do order products from them which are delivered using a company owned vehicle. We request that

Edward T. Mazzullo

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you provide an opinion as to whether the materials of trade exception would apply to the delivery of hazardous materials as described above. Thank you for your attention to this matter.

Sincerely yours,

CASEY GWINN, City Attorney

By

  
Jean N. McNamara  
Deputy City Attorney

JNM:mt